

an individual right to possess guns for purposes of both hunting and self-defense.”

At this time, I ask unanimous consent to have the letter to me from Professor Sunstein dated July 14, 2009, printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

WASHINGTON, DC,  
July 14, 2009.

Senator SAXBY CHAMBLISS,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR CHAMBLISS: Thanks so much for the meeting today, which I greatly enjoyed.

You requested my views on three subjects. Before commenting on the details, let me emphasize that if confirmed as Administrator of the Office of Information and Regulatory Affairs, my primary concern would be to ensure that regulations are consistent with the Constitution, the law as enacted by Congress, and the principles reflected in governing Executive Orders.

Your first question involved the Second Amendment. I strongly believe that the Second Amendment creates an individual right to possess and use guns for purposes of both hunting and self-defense. I agree with the Supreme Court's decision in the Heller case, clearly recognizing the individual right to have guns for hunting and self-defense. If confirmed, I would respect the Second Amendment and the individual right that it recognizes.

You also asked about litigation, by individuals, on behalf of animals. Let me be very clear: If confirmed, I would not take any steps to promote litigation on behalf of animals. In particular, federal law does not create an individual right to bring lawsuits, on behalf of animals, against agriculture. I do not favor and would not promote such a right.

Finally, you inquired about private enforcement of the law. Such private enforcement can in some cases be a useful way of ensuring compliance with legislative requirements, but it can also create serious harm, by imposing significant costs and burdens on those who are already obeying the law. Sometimes Congress concludes that the balance favors private actions; sometimes it decides against such actions. If confirmed, I would consult, and follow, congressional instructions on the question of whether private rights of action are available.

I hope that these answers are helpful, and I would be happy to address these or other issues at any time. All best wishes.

Sincerely,

CASS R. SUNSTEIN.

Mr. CHAMBLISS. Administration nominees deserve a fair hearing by the Senate, and Professor Sunstein is no different. While I cannot agree with his ideas, his legal theories, or his views, now that he has been educated about the toll they would take on hard-working farmers and ranchers in America, I am not going to keep him from any further consideration. I intend to lift my hold on Professor Sunstein.

I understand from Professor Sunstein now that he has a much better understanding of animal agriculture and our country's sporting tradition. I am optimistic that this open dialog with animal agriculture will continue. I obviously look forward to working with him to ensure he continues to carry

out exactly what he stated to me in his letter of July 14.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

#### TAXES AND HEALTH REFORM

Mr. GRASSLEY. Mr. President, I rise to discuss the high rate of taxation that is about to take place if the House of Representatives passes its health reform bill. I would also raise the issue about the effect the same level of taxation—not quite as high—would have under the budget adopted by this body back in March. I wish to address the tax hikes, particularly as they apply to small business, that President Obama and my colleagues on the other side of the aisle have proposed.

The latest tax hike proposal is the House Democrats' graduated surtax of up to 5.4 percent on those making more than \$280,000. For those Americans who are married but file separate returns, this surtax increases taxes for those making over \$175,000.

I refer to this surtax as a small business surtax because it hits small business particularly hard. Here is how the House's small business surtax works. In 2011 and 2012, singles making between \$280,000 and \$400,000 will pay an extra 1 percent, those singles making between \$400,000 and \$800,000 will pay an extra 1.5 percent, and those singles making more than \$800,000 will pay an extra 5.4 percent. Then in 2013 and after, these rates go to 2 percent, 3 percent, and 5.4 percent, respectively. The only way the rates do not go up to these levels is if one of the President's advisers, the Director of OMB, says in 2012 that there will be more than \$675 billion in health care savings by the year 2019 in the bill the House has recently written. That is right, in addition to the tax questions, we have the House leaving up to a partisan Presidential adviser—not the President himself or a nonpartisan organization such as CBO—that taxes stay up or can go down.

Another troubling aspect of this charade is that this does not deal only with actual savings achieved but instead calls for a partisan's 2012 estimate of savings to be achieved through the year 2019. The Joint Committee on Taxation, a nonpartisan professional group here on the Hill that advises Congress, correctly ignores this charade in its estimate of the House small business surtax and correctly assumes that the rates are actually going to go up after 2013.

In 2011 and 2012, then, for married couples, the small business surtax kicks in at 1 percent for those making \$350,000 to \$500,000, it rises to 1.5 percent for married couples making between \$500,000 and \$1 million, and it goes up to 5.4 percent for those making over \$1 million. Then in 2013 and later, the rates go up to 2 percent, 3 percent, 5.4 percent, respectively. As discussed above, the only way these rates do not

go up in 2013 is if the OMB Director decides they should not go up.

Let's look at this tax increase from the venue of small business. I know people listening, as well as my colleagues, think: You talk about people making \$1 million or half a million dollars, why can't they pay another 2, 3, or even 5 percent? It is a situation where small business in America creates 70 percent of the jobs. It is a case of where most small business operates on cash flow, not investment from the outside as normal corporations would. So we are talking about the health of our economy, and we are talking about getting the economy out of this recession we are in.

By the way, the President and I agree that 70 percent of the new private sector jobs are, in fact, created by the small businesses I have just described. However, where the President and I differ is that I believe small businesses' taxes should be lowered, not raised during this time of getting the economy back on track—particularly when you look at the stimulus bill that was passed back in February. It doesn't appear to anybody as if it is doing any good yet, like creating the jobs it was supposed to do, like keeping unemployment under 8 percent, which is now 9.5 percent, and only one-half of 1 percent of that \$787 billion stimulus package was to help small business. We ought to be doing something, if we want to revitalize the economy, that helps small business, and increasing taxes on small business will not do that.

In 2001 and 2003, Congress enacted bipartisan tax relief designed to trigger economic growth and to create jobs by reducing the tax burden on individuals as well as small businesses. This included the across-the-board income tax reduction which reduced marginal tax rates for income earners at all levels. I know people do not believe this, but if you look at the allocation of the tax by the highest 1 percent of the people, even after the 2001 tax cut, you saw that highest 1 percent still paying a larger proportion into the Federal Treasury, of income tax, than they were doing prior to that. So even with tax reduction, you end up with a more progressive Tax Code—which nobody is willing to admit, but we can back that up by figures. It also, in 2001, included a reduction of the top dividends and capital gains tax rate to 15 percent and a gradual phaseout of the estate tax.

Unfortunately, the way you have to write tax bills under the reconciliation process around here, those tax bills enacted in 2001 and 2003 will expire December 31, 2010, and automatically we are going to get the biggest tax increase in the history of the country without even a vote of Congress because of sunset.

Some have referred to this bipartisan tax relief as “the Bush tax cuts for the wealthy.” However, it seems to be easily forgotten around here, but this tax relief was bipartisan tax relief and provided tax relief for all taxpayers. They

have also suggested that the tax relief provided for higher income earners, including many small businesses, should be allowed to expire. The President has proposed increasing the top marginal tax rates from 33 to 36 percent and the other one from 35 to 39.6 percent.

We have a chart here you can refer to, so all these numbers I am giving, you have a reference point for them.

The President has also proposed increasing the tax rates on capital gains and dividends to 20 percent and providing for an estate tax rate as high as 45 percent and an exemption of only \$3.5 million.

Also, the President and allies on the Hill have called for fully reinstating the personal exemption phaseouts—we call them PEP, for short—personal exemption phaseouts for those making over \$200,000. Then there is another phaseout called the Pease phaseout, named after a former Congressman from Ohio, for those making more than \$200,000. So, under the 2001 tax law, when these phaseouts come back in after 2010, you actually end up with higher marginal tax rates of almost 2 percent. It is not 39.6 as the high marginal tax rate; it is something much higher—41 or 42 percent.

You know what you do, you get the smokescreen of saying you don't quite have a 40-percent marginal tax rate, but in fact you do have higher than 40 percent. There seems to be something magical about not exceeding that 40 percent for the benefit of public relations, but it will be exceeded greatly with this 5.4 percent the House is putting in, in their health care bill.

However, like other provisions in the law, PEP and Pease are scheduled to come back in full force, as I just said, in 2011—again, without a vote of Congress. With PEP and Pease fully reinstated, individuals in the top two rates could see their marginal effective tax rates increase by 24 percent or more.

Once again, I refer my colleagues to the chart. For example, a family of four who is in the 33-percent tax bracket in 2010 could pay a marginal effective tax rate of 41 percent after 2010 because of PEP and Pease. This rate would go higher if that family had more children, and this is before the small business surtax is even factored in.

Some of my colleagues, particularly on the other side of the aisle, have defended this proposal by claiming that they will only raise taxes on wealthy taxpayers who make more than \$200,000 a year. For the vast majority of people who earn less than \$200,000, raising taxes on higher earners might not sound so bad. However, there are consequences for what we do around here. That means many small businesses will be hit with a higher tax bill. These small businesses create 70 percent of all new private sector jobs. These small businesses that are sole proprietors, S corporations, partnerships, and limited law corporations would get hit with the President's proposal to raise the

top two marginal tax rates, if their owners make more than \$200,000.

In addition, there is just under 2 million small C corporations that are subject to double taxation. To the extent that these C corporation owners make over \$200,000 and pay themselves a salary, they would get hit with a tax increase on the top two marginal tax rates proposed by the President. Also, owners of small C corporations who receive dividends or realize capital gains and make over \$200,000 would pay a 20-percent rate on these dividends and capital gains after 2010, under these tax-hike proposals. Currently, these pay a rate of 15 percent.

All of this wasn't bad enough for small business. Why emphasize small business? It is the job creation machine of the economy. Why emphasize small business? They operate cash flow, generally. They don't have outside investors. And why emphasize small business? Because it takes entrepreneurs to create jobs. I had the opportunity for 10 years, from 1961 to 1971, to be a union assembly line worker at a little company called Waterloo Register in Cedar Falls, IA. We made furnace registers. I use that company—locally owned, people who got together to create jobs—as an example. They gave me an opportunity to earn a small livelihood for 10 years of my life. It takes people who have means to create jobs. I have never worked for anybody who was low income or in poverty. You have to have the incentive of people in this country to put resources together to create income for themselves and, in the process of expanding, increase jobs for everybody else. So you understand where I am coming from, from the standpoint of small business.

The House of Representatives has proposed a graduated surtax of up to 5.4 percent on those making over \$280,000. To people listening, \$280,000 is a lot of money, probably the top 3 or 4 percent of the people. But if they are a small business and they are operating with cash flow, cutting into that cash flow is a job killer. With this small business surtax, a family of four in the top two brackets will pay a marginal tax rate in the range of 43 and 46.4 percent in 2013. I am not prepared to say this right now, but maybe when I end I will say something about the State income tax on top of that, to show how high are the taxes these ideas are taking us to.

When you go to 43 and 46.4 by 2013, this would result in an increase of the marginal tax rates by a minimum of 23 percent and a maximum of 33 percent.

Candidate Obama pledged that "Everyone in America—everyone—will pay lower taxes than they would under the rates Bill Clinton had in the 1990s." I am going to show you, if this goes into effect, it is probably the highest rates, going back to the time Carter was President. The small business surtax proposed by House Democrats would violate President Obama's pledge. Therefore, I stand with President

Obama in opposing the small business surtax proposed by House Democrats.

According to National Federation of Independent Businesses survey data, 50 percent of the owners of small businesses that employ 20 workers to 249 workers would fall into the top two brackets, backing up what I have continuously said during my dialog with the people. According to the Small Business Administration, about two-thirds of the Nation's small business workers are employed by small businesses with 20 to 500 employees. Do we want to raise taxes on these small businesses that create new jobs and employ two-thirds of all small business workers?

The National Federation of Independent Businesses recently came out with its June report that showed that small businesses continue to have net job losses as well as reduced compensation for those who are still on the payroll; in other words, not part of the 9.5 percent unemployment we have since the stimulus bill passed. With these small businesses already suffering from the credit crunch, do we think it is wise to hit them with the double whammy of up to a 33-percent increase in marginal tax rates.

Newly developed data from the Joint Committee on Taxation demonstrates that 55 percent of the tax from the higher rates will be borne by small business owners with incomes over \$250,000. This is a conservative number because it doesn't include flow through business owners making between \$200,000 and \$250,000 that will also be hit by the Democratic budget's proposed tax hikes. If the proponents of the marginal rate increase on small business owners agree that a 23-percent to 33-percent tax increase for half the small businesses that employ two-thirds of all small business workers is not wise, then they should either oppose these tax increases or present data that show a different result. I wish to fight for lower State tax rates and higher estate tax exemption amounts to protect successful small businesses so people who work a lifetime can pass on without liquidation at the time of death.

In a time when many businesses are struggling to stay afloat, it does not make sense to impose additional burdens on them by raising taxes. Odds are they do nothing then but cut spending. And when their cash flow goes down, probably layoffs happen. They will cancel orders for new equipment as well, cut insurance for their employees, and stop hiring. Instead of seeking to raise taxes on those who create jobs in our economy, our policies need to focus on reducing excessive tax and regulatory barriers that stand in the way of small businesses and the private sector making investments, expanding production, and creating sustainable jobs. We should continue to fight to prevent a dramatic tax increase on our Nation's job machine, the small businesses of

America. This includes working to protect small businesses from higher marginal tax rates, an increase in capital gains and dividend tax rates and an increase in the unfair estate tax rate that will penalize the success of small businesses.

In fact, I have recently introduced S. 1381, the Small Business Tax Relief Act of 2009, to lower taxes on these job-creating small businesses. My bill contains a number of provisions that will leave more money in the hands of these small businesses so these businesses can hire more workers, continue to pay the salary of their current employees, and make additional investments in these businesses. The National Federation of Business has written a letter supporting my bill.

Quoting from the letter:

To get the small business economy moving again, small business needs the tools and incentives to expand and grow their business. S. 1381 provides the kind of tools and incentives that small businesses need.

We all want to see the job numbers from the Department of Labor moving in positive directions. We all want to see the unemployment rate plummet. I firmly believe the best way for us to do that is to prime the job-creating engine of our economy by focusing on small businesses. My small business bill, if enacted, will lead to new jobs. This is in the right direction. The House health care reform bill, with the 5.4-percent tax increase, is taking us in the wrong direction. These will be real, countable, verifiable jobs that will be created.

In contrast, President Obama has proposed tax increases that will cause small business jobs to be lost. The newest tax hike proposed is the small business surtax. As with other tax hikes on small business, I oppose the small business surtax. I urge my colleagues on both aisles to do the same.

I ask unanimous consent to print in the RECORD the NFIB letter from which I quoted.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NATIONAL FEDERATION OF  
INDEPENDENT BUSINESS,  
Washington, DC, July 10, 2009.

Senator CHARLES GRASSLEY,  
Ranking Member, Senate Committee on Finance,  
Washington, DC.

DEAR RANKING MEMBER GRASSLEY: On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, I am writing to thank you for introducing S. 1381, the Small Business Tax Relief Act of 2009.

Small business is the source of economic growth and job creation, but the NFIB Small Business Economic Trends (SBET) survey has been near historic lows since September, with plans to hire and make capital expenditures showing little sign of improvement. To get the small business economy moving again, small businesses need the tools and incentives to expand and grow their businesses.

S. 1381 provides the kinds of tools and incentives that small businesses need. Specifically, increasing and making permanent sec-

tion 179 expensing will provide small businesses with the incentives and certainty to make new investments in their business. Providing a 20 percent deduction for smaller flow-through businesses and reducing the tax rate on smaller C corps will allow all small businesses to keep more of their income to invest back into the business. Finally, providing full deductibility of health insurance for the self employed provides tax equity, lowers the cost of health insurance, and improves an important deduction for these business owners.

These and other provisions in the bill will reduce the tax burden on small businesses. This is especially important in the current economic environment with many small businesses struggling to find access to credit. Allowing business owners to keep more of the money they earn provides an immediate source of capital that will be invested back into the business.

Thank you again for your continued efforts to support small business owners and to reduce their tax burden. I look forward to working with you to see that this bill becomes law.

Sincerely,

SUSAN ECKERLY,  
Senior Vice President, Public Policy.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

## EXECUTIVE SESSION

### EXECUTIVE NOMINATIONS

Mr. NELSON of Florida. Mr. President, I ask unanimous consent that the Senate proceed to executive session and that the Commerce Committee be discharged en bloc from further consideration of PN638 and PN639 and that the Senate proceed en bloc to their consideration; that the nominations be confirmed and the motions to reconsider be laid upon the table en bloc; that no further motions be in order; that any statements relating to the nominations be printed in the RECORD; that the President be immediately notified of the Senate's action; and the Senate then resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed are as follows:

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Charles F. Bolden, Jr., of Texas, to be Administrator of the National Aeronautics and Space Administration.

Lori Garver, of Virginia, to be Deputy Administrator of the National Aeronautics and Space Administration.

Mr. NELSON of Florida. Mr. President, by this action, it concludes a very happy chapter for what I think will be the future of the National Aeronautics and Space Administration. PN638 is Presidential No. 638, and that is the nomination of GEN Charles F. Bolden to be the NASA Administrator, whom we have just confirmed, and PN639 is Presidential No. 639, which is the nomination of Lori Garver to be Deputy Administrator for NASA which we have just confirmed. My congratulations to the two of them.

I will make one personal comment. General Bolden is someone who has known adversity but has always been an overcomer.

This was certainly true in South Carolina, in 1964, when, as an African American, he could not get an appointment from his congressional delegation to Annapolis. The Defense Department found Charlie and arranged for a Chicago Congressman to nominate him. When Charlie arrived as a freshman at Annapolis, he was promptly elected president of the freshman class. So you can see the progression of being an overcomer.

Upon graduation from Annapolis, choosing the Marines, choosing to fly, becoming a marine test pilot, applying to the astronaut office, becoming an astronaut, flying twice as shuttle pilot and twice as commander—four times—returning to active duty in the Marine Corps, and rising to the level of major general, after having commanded several Marine wings; and now the dream is fulfilled that Charlie has now been confirmed as head of the National Aeronautics and Space Administration.

I think it is interesting that at 6:03 this evening the space shuttle lifted off into a successful mission. This space shuttle holds the second record for the most delays—six. It is exceeded by the first space flight that General Bolden took, of which I had the privilege of being a member of that crew in January of 1986. We were delayed seven times—scrubbed four times on the pad before launching on the fifth try into an almost flawless 6-day mission.

General Bolden takes over NASA at a critical time. NASA is in drift. It needs a leader. But also for General Bolden to be successful as the leader of NASA, he has to have the backing of the President of the United States, who is the one who can give the ultimate leadership to our Nation's space program.

So it was such a privilege for me, Mr. President, to come and propound this unanimous consent request and to see the Senate confirm, by your order, unanimously, the nominations of the Administrator and the Deputy Administrator of NASA. Needless to say, there are a lot of smiles that are going to be across America as a result of this action.

Thank you, Mr. President. I yield the floor.

Ms. MIKULSKI. Mr. President, I am in support of President Obama's nomination of Charles Bolden as the next Administrator of the National Aeronautics and Space Administration, NASA, and Lori Garver as the Deputy Administrator of NASA.

We are at a critical point in NASA's history, and our space agency needs a leadership team devoted to the core mission of the agency.

Mr. Bolden has a compelling story. He transcended barriers and established himself at the forefront of our Nation's scientific policy. A career marine and true leader, Mr. Bolden is deeply committed to fostering a balanced space program focused on safe,